

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation)	
Provisions of the)	
Telecommunications Act of 1996)	
)	
RBOC/GTE/SNET Payphone Coalition)	NSD File No. L-99-34
Petition for Reconsideration)	

**COMMENTS OF VARTEC TELECOM, INC. TO PETITIONS FOR
DECLARATORY RULING, RECONSIDERATION AND/OR CLARIFICATION
OF THE PAYPHONE COMPENSATION SECOND ORDER ON
RECONSIDERATION**

VarTec Telecom, Inc. (“VarTec”) hereby submits its comments in response to the Commission’s Notice seeking comment on petitions for declaratory ruling, reconsideration and/or clarification filed by Bulletins, WorldCom, Inc., AT&T and Global Crossing Telecommunications, Inc. (“Notice”).

I. Introduction

The Notice indicates that several parties have filed petitions for declaratory ruling, clarification and/or consideration of the Federal Communications Commission (the “Commission”) *Second Order on Reconsideration* released on April 5, 2001, which modified the rules governing the entity responsible for compensating a payphone service provider (PSP) for coinless calls placed from a payphone that are routed to the network of a facilities-based interexchange carrier (IXC), and then to one or more IXC resellers before being transferred to a local exchange carrier (LEC) for call completion.

Bulletins seeks clarification of whether the modified rules relieve certain LECs from their obligation to compensate PSPs for coinless calls made from a payphone, and whether IXC's are provided a basis for exempting calls originated from payphones serviced by competitive local exchange carriers (CLECs). WorldCom, Inc. ("WorldCom") seeks a declaratory ruling that a completed dial-around payphone call is defined as one that is completed on the underlying carrier's network, or one that is handed off to switch-based reseller customers that do not have prior agreements with all PSPs to pay dial-around compensation. WorldCom also seeks clarification that carriers are only required to report compensable toll-free and access number calls. AT&T seeks clarification of whether its practice of compensating PSPs at the Commission-established rate for all calls sent to a switch-based reseller's switching platform, regardless of whether such calls are completed, is consistent with the Commission's requirements. AT&T also seeks clarification and/or reconsideration of the IXC's reporting obligations to PSPs. Global Crossing Telecommunications, Inc. ("Global Crossing") requests that the Commission establish a specific timing surrogate for determining whether a particular call is completed, and therefore compensable. Global Crossing also seeks reconsideration of the reporting requirements.

II. Discussion

VarTec is a switch-based reseller customer that currently pays COCOTS in excess of \$50,000 to PSPs per quarter. If the Commission adopts the proposals of WorldCom and AT&T, VarTec could see its COCOTS expense rise four-fold. VarTec strongly believes that this increase would be without justification or a legal basis as outlined

below. However, VarTec does agree with the comments of AT&T and Global Crossing regarding the Commission's new reporting requirements.

A. Technically AT&T And WorldCom Can Determine If A Call Is Completed.

Both WorldCom and AT&T want this Commission to believe that they are “technically” unable to determine which calls are completed when calls are routed to a switch-based reseller for completion to the called party. However, current technology as well as current practices refutes these claims. In most cases, if not all, SS7 signaling and older technologies make it possible for the originating IXC's to determine whether a call is completed to the called party even when routed to a switch-based reseller. The call completion process from a call originating from a payphone is exactly the same process as that of a call originating from a POTs line. Thus, if WorldCom and AT&T cannot “technically” determine whether a call is completed to the called party from a payphone they would not be able to determine whether ANY long distance call carried by them was completed to the called party. Furthermore, VarTec believes that current billing practices call WorldCom and AT&T's position into question. Today, VarTec and other resellers are only billed for completed 800 calls by originating IXC's, which mean that IXC's must have some capability to determine whether a call is completed.

B. Administrative Costs Of Billing COCOTS For Incompleted Calls Does Not Outweigh The Costs Savings From Not Being Billed.

VarTec also disagrees with WorldCom and AT&T's claims that the administrative costs of IXC's reporting back to the original IXC whether a call was completed would exceed the costs savings from not being billed on incompleted calls. VarTec has determined that based on its 800-call volume, the costs savings would be in the range of \$.025 to \$.03 per call. VarTec does not believe that AT&T or WorldCom

could justify an additional \$.025 to \$.03 per call for administrative costs. Quite to the contrary, switch-based resellers have every incentive to assist originating IXCs in determining whether calls are completed to the called party, for absent such assistance, it will be the reseller that is responsible for paying the additional costs.

C. WorldCom And AT&T's Positions Are Legally Flawed.

Most importantly, VarTec believes that WorldCom and AT&T's proposal that they be allowed to bill switch-based resellers, like VarTec, for incompleting calls is without a legal basis. According to 47 U.S.C. § 276, PSPs are only entitled to compensation for "completed calls," which the Commission recognized in its *Second Order on Reconsideration*. Thus, WorldCom and AT&T want to bill resellers for calls they have no obligation to pay. Adopting WorldCom and AT&T's positions will result in PSPs being overcompensated, or WorldCom and AT&T being unjustly enriched, both being contrary to law.

In addition, VarTec strongly disagrees with WorldCom's attempts through its motion for reconsideration and current business policy¹ to require switch-based resellers and other resellers to enter into independent agreements with *each* PSP it dictates. Nowhere in the Commission's *Second Order on Reconsideration* is this mandated. VarTec's practice is to pay COCOTS expenses directly to PSPs that bill the company, either through a formal or informal arrangement. VarTec does not believe, and the Commission has not required, that switch-based resellers like VarTec are to seek out every PSP and enter into formal agreements with them. However, VarTec respectfully requests that the Commission clearly provide that it is the switch-based IXC, not the PSP,

¹ WorldCom has sent out Indemnification Agreements that its reseller customers are required to sign, which provides a list of all the PSPs that the reseller customer must enter into an agreement with.

that calculates the payment and the amount owed for COCOTS since the IXC is in the best position to know which calls were completed on its network.

D. Reporting Requirements Are Onerous

While VarTec vehemently disagrees with most of the points raised by the petitioners, VarTec does agree with AT&T and Global Crossing's comments regarding the reporting requirements found in the Commission's *Second Order on Reconsideration*. Like these companies, VarTec would have the burden of creating new reports by November 23, 2001. For VarTec, significant system enhancements will be necessary to fulfill the new reporting requirements. These requirements will impose substantial costs on VarTec for manpower, system changes, and receipt of detailed call records to comply with the Commission's mandate. Also, VarTec believes that the reporting requirements will not produce information that is particularly useful to the PSP. Notwithstanding, VarTec believes that additional time will be required for it and other IXCs to develop the system changes necessary to comply with the Commission's extensive new reporting requirements. VarTec's comments regarding the reporting requirements only apply to the extent that switch-based resellers are allowed to continue to pay PSPs directly for COCOTS charges and thus, would be responsible for providing the reports to PSPs.

E. PSPs Should Receive The Same Rate For Payphone Calls As They Do For Local Calls.

VarTec believes that many of these issues raised by petitioners could be eliminated if PSPs receive the same rate for toll-free calls as they do for local calls. VarTec believes that if toll-free calls are treated similarly to other payphone calls many of the administrative costs and burdens would be eliminated for all the parties and entities

involved. Moreover, this would not increase the costs to customers but merely change when and to whom the customer pays since customers are already paying for these calls through surcharges imposed on them.

III. Conclusion

WHEREFORE, for the foregoing reasons, VarTec Telecom, Inc. respectfully requests the Commission's consideration of these comments as these matters will significantly impact VarTec Telecom, Inc.'s current business operations.

Respectfully submitted,

_____/s/_____
Michael G. Hoffman
Chief Legal Counsel
VarTec Telecom, Inc.
1600 Viceroy Dr.
Dallas, Texas 75235
(214) 424-1000

_____/s/_____
Patricia Zacharie
Regulatory Counsel
VarTec Telecom, Inc.
1600 Viceroy Dr.
Dallas, Texas 75235
(214) 424-1504